

DATE ISSUED:

REPORT NO.:

ATTENTION: Council President and City Council
Agenda of

SUBJECT: Affordable Housing Density Bonus. Project Number 63422.
Citywide. Process Five.

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107.
Planning Commission Report No. PC 06-264.

REQUESTED ACTION:

Approval of amendments to the Land Development Code (LDC) and Local Coastal Program related to the Affordable Housing Density Bonus regulations.

STAFF RECOMMENDATION:

1. **CERTIFY** Supplement to Environmental Impact Report No. 96-0333 (Project 63422) and adopt the Findings and Statement of Overriding Considerations.
2. **APPROVE** the amendments to the Land Development Code and the City's Local Coastal Program related to the city's Affordable Housing Density Bonus regulations as recommended by the Mayor's Office (Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

SUMMARY:

State law requires cities in California grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels.

The California State Legislature has amended the State Density Bonus Law three times since 2003, with the latest amendment being implemented in January 2006. The state's amended Density Bonus Law already applies in the City of San Diego. The purpose of this amendment to

the LDC and Local Coastal Program is to comply with the state requirement that the city adopt an ordinance that specifies how compliance with state law will be implemented, and to craft regulations that provide guidance and protections within the city's regulatory framework. Adoption of the Affordable Housing Density Bonus Regulations will provide applicants increased densities and incentives that encourage development of new affordable and senior housing throughout the city.

Planning Commission Recommendation:

On October 12, 2006 the Planning Commission voted 5-0-0 to recommend approval of the proposed amendments related to affordable housing density bonus with the following recommendations:

- Investigate the relationship between parking needs and affordable housing to determine if the parking standards should be reduced;
- Look at the relationship between the locations of projects using density bonus and transit to see if there can be a further reduction in parking requirements;
- Attempt to simplify the way the regulations are written to make them more user friendly;
- Track the use of the density bonus provisions to learn where they are being used, the incentives requested, and how existing zoning patterns in the city may be affecting its use;
- Consider allowing applicants that satisfy the affordable housing component of the regulations to request the incentive(s) provided in the regulations while forgoing the increase in density; and
- Remove the option of the in-lieu fee in the Inclusionary Housing Ordinance.

Background:

Since 2003 the California State Legislature has voted for three bills related to density bonus. The legislature intended that density bonus be an incentive program that would result in significant increases in the number of affordable housing units produced throughout the state. The regulations were designed to eliminate barriers to creating affordable housing that, over the years, have been implemented by local jurisdictions to avoid increases in residential density and prevent the perceived social ills of affordable housing. The draft Affordable Housing Density Bonus Regulations reflect the intent, and incorporate the requirements, of the State Density Bonus Law.

The City Planning and Community Investment Department has been working with the San Diego Housing Commission, the City Attorney's Office, and the Development Services Department to amend the city's Affordable Housing Density Bonus regulations since 2003. The amended regulations were docketed for City Council in January 2007 and continued to February in order

to address questions raised by council members. Between the January and February hearing the City Attorney's Office reconsidered the direction it had previously taken and determined that the State Density Bonus Law, as written, allowed for multiple interpretations. Prior to the February Council hearing the City Attorney's Office submitted a second, alternative ordinance for the City Council to consider. The City Council again continued the item for one month so that the differences in the ordinances could be worked out. The one month continuance was not sufficient to work out the differences and in March the item was returned to the Mayor's Office.

Since March the City Planning and Community Investment Department (CPCI), the San Diego Housing Commission, the City Attorney's Office, and Development Services Department have been working together toward the goal of providing either one ordinance that all agree with or, presenting an ordinance that represents the direction from the Mayor's Office but also presenting clearly delineated alternatives for the City Council to consider. In an effort to accomplish this CPCI eliminated two policy related components from its proposed regulations. This report supports the Mayor's recommended ordinance in Attachment 1A; however, an alternate version of the ordinance (Attachment 1B) which includes regulations to implement the policies favored by the City Attorney's Office, has been prepared for City Council consideration. With the exception of the language related to the policy issues, the two ordinances are identical. This report will address those differences in the report section titled "Mayor's Recommendations and Alternatives" (beginning on page 11 of this report).

The two policy related components of the regulations that CPCI removed from the proposed amendment relate to (1) the onsite building bonus for projects that satisfy their inclusionary housing requirement onsite and (2) added protections for environmentally sensitive lands (ESL) within the Coastal Overlay Zone. The two policy areas are unrelated. CPCI is comfortable removing these two components. It was revealed during the public review period that projects using the onsite building bonus in conjunction with State Density Bonus Law could achieve the maximum 35 percent density bonus without providing the minimum number of affordable units necessary to achieve the 35percent density bonus under State Density Bonus Law. Although removed from this proposal, the Housing Commission and CPCI will continue to research methods to encourage development of onsite inclusionary housing. Regarding removal of additional protections for ESL within the Coastal Overlay Zone, the city is required to submit the regulations to the California Coastal Commission for unconditional certification after City adoption of the regulations. Additional protections for environmentally sensitive lands within the Coastal Overlay Zone will be among the future discussions between City and California Coastal Commission staff.

Project Description:

Both drafts of the Affordable Housing Density Bonus Regulations (Attachments 1A and 1B) reflect the amendments made to State Density Bonus Law. The following is a summary of the significant changes to State Density Bonus Law that have been enacted.

- A new density bonus category was added for projects that donate land to the city to be developed with affordable housing.

- A new density bonus category was added for projects that include for-sale moderate income housing units in common interest developments.
- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless there is a conflict with another funding source or law.
- All rental projects that receive a density bonus must maintain the affordable units at the required affordability level for 30 years.
- The maximum affordable housing density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was created. The density bonus an applicant is granted is determined by the percentage of affordable units provided and the level of affordability (low income, very low income, or moderate income). Table 1 identifies the area median incomes for very low, low, and moderate income adjusted for household size.
- The senior housing density bonus is 20 percent and now also applies to senior mobilehome parks. The density bonus for senior housing is not restricted by income level.
- The city must grant up to three incentives to qualifying affordable housing projects that request incentives. The number of incentives a project is eligible for depends upon the percentage of affordable units provided and the level of affordability.
- Applicants choose the incentives and must demonstrate that the incentive(s) is necessary to make the housing units economically feasible. If the applicant demonstrates that the incentive is necessary to make the units economically feasible, the city must grant the requested incentive(s) unless a specific finding of denial is made.
- The findings to deny a requested incentive are that either the requested incentive is not necessary to provide the affordable units; or that the requested incentive would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The city must offer an additional incentive to qualifying projects that include onsite day care facilities meeting specified conditions [see Section 143.0740(f) of the draft regulations in Attachments 1A and 1B].
- State Density Bonus Law provides specific parking ratios and standards for projects using the Affordable Housing Density Bonus Regulations. Attachment 2 compares the current city ratios to the proposed parking ratios. In addition to revised ratios, a development using density bonus may use tandem or uncovered parking to meet the parking standard. The city also proposes to restrict parking from the required front yard.

TABLE 1
Household Size and Income Level

| Household Size | 2007 Income Levels | | |
|----------------|-----------------------|---------------------|---------------------------|
| | Very Low ≤ 50% AMI | Low 50 – 80% AMI | Moderate 80 – 120% AMI |
| One | ≤ \$ 24,550 | \$ 24,550 – 39,300 | \$ 39,300 - 58,300 |
| Two | ≤ \$ 28,100 | \$ 28,100 - 44,900 | \$ 44,900 - 66,700 |
| Three | ≤ \$ 31,600 | \$ 31,600 - 50,555 | \$ 50,555 - 75,000 |
| Four | ≤ \$ 35,100 | \$ 35,100 - 56,150 | \$ 56,150 - 83,300 |
| Five | ≤ \$ 37,900 | \$ 37,900 - 60,650 | \$ 60,650 - 90,000 |
| Six | ≤ \$ 40,700 | \$ 40,700 - 65,150 | \$ 65,150 - 96,700 |

Incentives

A major component of the state’s amended Density Bonus Law is the incentive. The state amended law grants applicants up to three incentives when their project includes affordable housing units consistent with the requirements of the Density Bonus Law. The number of incentives to be granted is based upon the percentage of affordable units in the project and the level of affordability (very low-income, low-income, or moderate-income) as identified in Table 2. The incentives may take the form of deviations to development regulations.

TABLE 2
Number of Incentives
Fixed to Percent Density Bonus and Income Level

| Number of Incentives | Percent Pre-Density Bonus Units | | |
|----------------------|---------------------------------|------------|-----------------|
| | Very Low Income | Low Income | Moderate Income |
| 1 | 5% | 10% | 10% |
| 2 | 10% | 20% | 20% |
| 3 | 15% | 30% | 30% |

The State Density Bonus Law includes a “safety valve” (findings to deny an incentive) to address incentives that are not related to the provision of affordable housing, or that would result in an adverse impact. Recognizing that the overarching goal is to promote development of affordable housing, the state intended the findings to be required only to deny an incentive. If no action is taken the incentive is approved. There are two findings for denial of a requested incentive.

1. The first finding for denial is that there is no nexus between the requested incentive and the incentive being needed to make the units affordable. Specifically, the finding is that the incentive is not required to provide affordable housing.

2. The second finding for denial is that there are adverse impacts that cannot be mitigated without rendering the project unaffordable. The finding is that the incentive would have an adverse impact upon:
 - Health and safety; or
 - The physical environment; or
 - On any real property listed on the California Register of Historical Resources, And for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

An additional “safety valve” is provided in Section 143.0740(c) of the draft Affordable Housing Density Bonus Regulations. This section of the ordinance identifies items that can not be requested as an incentive. Section 143.0740(c) of the draft Affordable Housing Density Bonus Regulations identifies six subject areas that will not be accepted by the City of San Diego as incentives. The section reads as follows:

- (c) Items not considered incentives by the City of San Diego include, but are not limited to the following:
 - (1) A waiver of a required permit;
 - (2) A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5);
 - (3) A waiver of fees or dedication requirements;
 - (4) A direct financial incentive;
 - (5) A deviation from the requirements of the San Diego Building Regulations; or
 - (6) For projects required to notice the Federal Aviation Administration, an increase in height that has not received a determination of No Hazard to Air Navigation.

Response to Planning Commission

Additional modifications and clarifications have been incorporated into the draft regulations in response to recommendations made by the Planning Commission on October 12, 2006. Regarding parking, the parking ratio for units of 4 or more bedrooms has been reduced from the state requirement of 2.50 spaces per unit to the current citywide standard of 2.25 spaces per unit. Clarifying language has also been added to make clear that projects may take advantage of reductions in parking currently permitted for projects within the Transit Area Overlay Zone and for units designated for very low income households. Regarding the Planning Commission’s concerns about the complexity of the regulations, the draft regulations have been modified to provide more clarity. The Development Services Department will also develop an Affordable Housing Density Bonus information bulletin to assist the public. The Planning Commission’s direction to track projects using the density bonus program is an administrative function that can be accomplished. Attachment 4, Density Bonus Projects by Planning Areas and by Council Districts, and Attachment 5, Income and Density Bonus Project Distribution (2006), have been included in this report to provide information on distribution of affordable housing throughout the city.

The Planning Commission also asked that consideration be given to modifying the regulations to allow applicants that provide the required percentage of affordable housing units to take advantage of the incentives in the regulations without accepting density bonus units. It is clear that the State Density Bonus Law was written to provide incentives only to projects that use the density bonus. However, there is no requirement in the legislation that requires an applicant to accept more than a single bonus unit. Regulations that provide incentives for applicants that provide a required percentage of affordable housing units, without the increased density, will be drafted as a separate ordinance for City Council consideration at a future date.

Issue Areas

A. Coastal Height Limit Overlay Zone

The proposed regulations do not permit a building to exceed the 30-foot Proposition ‘D’ height limit (codified in the Land Development Code as the Coastal Height Limit Overlay Zone). The Land Development Code is clear on this in two locations.

First, the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5) overrides all other regulations regarding height in the area regulated by Proposition ‘D’. It states, “Notwithstanding any section to the contrary, no building or addition to a building shall be constructed with a height limit in excess of thirty feet within the Coastal Zone of the City of San Diego” (§132.0505). In layman terms this means, no matter what any other section of the Land Development Codes states with regard to permitted height, within the Coastal Height Limit Overlay Zone a building cannot be constructed if it exceeds the 30-foot height limit. An amendment to this section of the Land Development Code requires a majority vote of the voters of the City of San Diego, and no amendment is proposed.

Second, to provide additional clarity, Section 143.0740(c)(2) of the proposed ordinance states that a request to exceed the Coastal Height Limit Overlay Zone cannot be used as an incentive. Specifically, it states that “Items not considered incentives by the City of San Diego include, but are not limited to the following: ...A deviation from the requirements of the Coastal Height Limit Overlay Zone (Chapter 13, Article 2, Division 5).” This provides a direct link to the regulations that codify the 30-foot Proposition ‘D’ height limit.

B. Height as Incentive (Outside the Coastal Height Limit Overlay Zone)

A request for an incentive that would result in an increase in height beyond the base zone limitation will first be reviewed as discussed in the section titled “Processing Incentives” beginning of page 11 of this report. After the determination of whether the project will be discretionary or ministerial has been made, the incentive for height will be reviewed. An increase in height beyond that permitted by the base zone may be requested as an incentive under the following conditions:

- **The applicant must first demonstrate that the project, without the additional density bonus unit(s), complies with the height limit of the base zone while providing the maximum allowable pre-density bonus units;**

- The applicant demonstrates that the additional height is necessary to make the housing units affordable;
- The height is analyzed for compliance with FAA rules;
- The additional height requested is to be only that which is needed to accommodate the additional density bonus units;
- The additional height is analyzed for adverse impacts on health & safety, the physical environment, or historical resources;
- If either of the findings for denying an incentive are made the height increase is disallowed; and
- If no finding of denial is made, then the project continues to move forward in either the discretionary or ministerial process.

C. Environmentally Sensitive Lands

All multi-family projects proposed on parcels containing environmentally sensitive lands, including those using the Affordable Housing Density Bonus Regulations, are required to apply for a Process Three Site Development Permit (appealable to the City Planning Commission) and are subject to CEQA review. Projects using the Affordable Housing Density Bonus would also be analyzed against the findings to deny a requested incentive, which include the finding related to adverse impacts to the physical environment. A project proposal on a site containing environmentally sensitive lands and using the Affordable Housing Density Bonus Regulations cannot be approved if the decisionmaker(s) cannot make the required permit findings for a Site Development Permit (Attachment 6) or if the decisionmaker(s) can make one of the findings to deny the incentive(s).

D. Waivers and Fees

The proposed regulations do not allow a waiver of required permits, dedications, or fees as an incentive. **All residential units constructed using the Affordable Housing Density Bonus regulations are required to pay all applicable fees including but not limited to FBA and DIF fees.** Section 143.0740(c) of the proposed ordinance removes from consideration as an incentive, waivers of permit requirements, waivers of fees or dedication requirements, and any request for a direct financial incentive.

E. For-Sale Moderate Income – Equity Sharing versus Deed-Restricted

State Density Bonus Law provides a density bonus and incentive(s) to applicants with projects that provide for-sale housing that is affordable to families earning a moderate income of 110 percent AMI. The proposed Affordable Housing Density Bonus

Regulations for moderate for-sale housing comply with State Density Bonus Law. Table 4 identifies the restricted sales price and associated monthly payments for moderate income for-sale housing at 110 percent AMI according to household size and unit size. The issue is how to most effectively administer the moderate income for-sale affordable housing. Should the for-sale program be administered as an equity sharing program where the first income-restricted family that purchases the home shares equity with the Housing Commission, or should the program be administered to require that the first family that purchases the home and all subsequent families must be income-restricted for a period of 55 years? The recommendation is that equity sharing should continue to be used to administrate the moderate income for-sale housing.

TABLE 4
Moderate Income For-Sale
110 Percent Area Median Income and Restricted Sale Price (2007)

| Household Size | Unit Size | Income | Restricted Sale Price | Monthly Payment |
|----------------|-----------|-----------|-----------------------|-----------------|
| One | Studio | \$ 53,450 | \$ 189,313 | \$ 1,137 |
| Two | 1 Bedroom | \$ 61,100 | \$ 213,883 | \$ 1,284 |
| Three | 2 Bedroom | \$ 68,700 | \$ 238,245 | \$ 1,431 |
| Four | 3 Bedroom | \$ 76,350 | \$ 266,363 | \$ 1,599 |

The San Diego Housing Commission proposes to administer the for-sale moderate-income affordable housing as is currently required in Section 142.1309 of the Inclusionary Housing Ordinance. That section provides for equity-sharing programs that share equity between the first income-restricted family that purchases the home and the San Diego Housing Commission. Administering the program in this fashion provides an incentive for a family to continue to live in the home by increasing the percentage of equity the homeowner earns over a fifteen year equity sharing timeline. Table 5 provides an example of how the equity sharing program works during year one, year seven, and year fifteen using the median condominium sales price in San Diego in May of this year. Additional benefits of equity sharing include:

- Providing additional funding to the San Diego Housing Commission to be used to help other income-restricted families;
- Generating equity that can help families with future financial needs, including funding college education;
- Creating an incentive to maintain and make improvements to the home; and
- Establishing a family's financial stability.

TABLE 5
Equity Sharing For-Sale Moderate Income*

| Year One | | Year Seven | | Year Fifteen | |
|----------------------------|------------|----------------------------|------------|--------------------|-------------|
| Housing Commission | Owner | Housing Commission | Owner | Housing Commission | Owner |
| \$ 129,255 + 85% Equity | 15% Equity | \$ 129,255 + 49% Equity | 51% Equity | \$ 129,255 | 100% Equity |

* \$ 367,500 Market Price
- \$ 238,245 Restricted Price (100% AMI)
\$ 129,255 Housing Commission Subsidy

An alternative to the equity sharing program is to deed restrict ownership of the moderate-income for-sale units for a period of 55 years. This alternative requires that the first income-restricted family to purchase a unit and any subsequent family that purchases the same unit over a 55 year period, to sell the home only to another income-restricted family earning no more than 110% of the AMI. The benefit of deed restricting units is that it guarantees long term affordability of the unit regardless of when or if a family should relocate. At the end of the first 55 year period this program will have resulted in more housing units available to moderate-income families earning 110 percent AMI. However, there are difficulties associated with deed restricting units for a long period of time that outweigh the benefit. The following difficulties are associated with deed restricting units.

- There is a limited pool of income qualified families earning 110% AMI. In order to qualify, a family of four earning \$69,400 a year and paying for monthly rent, transportation costs (including car payment(s), fuel, insurance, and maintenance), and food and clothing for four, must have little to no outstanding debt and a good credit rating.
- Long term affordability is unattractive to mortgage lenders. Lenders are uncomfortable with issues related to foreclosure, the need to rely on the Housing Commission to make whole any losses, and the long term requirement that a unit may only be resold to income-restricted families, all over a 55 year term.
- A family that must relocate (for family health or work related reasons) could be forced to sell their home at a loss. Increasing interest rates and HOA fees could combine to lower the restricted sales price and create a situation where the restricted price at the time of resale is less than it was for the previous homeowner.
- The San Diego Housing Commission will receive no shared equity funds that could otherwise be available to assist other income-restricted families.
- The San Diego Housing Commission subsidy will be unavailable for 55 years. After 55 years the subsidy will be significantly devalued and less valuable to other families needing assistance.

Mayor's Recommendations and Alternatives (Attachments 1A and 1B)

There are two policy components within the regulations for which alternative policies are provided. The first policy relates to processing of incentives when the only reason for a discretionary permit is the incentive(s) requested in accordance with State Density Bonus Law. The second policy for which an alternative is provided is the city initiated amendment that would increase the base density bonus provided to projects that provide for-sale housing affordable to moderate-income households. The following provides an explanation of the two policy areas. The draft regulations in Attachment 1A represent the policies recommended by the City Planning and Community Investment Department (Mayor's recommendation). The draft regulations in Attachment 1B represent alternative policies. These two policy components are unrelated; therefore, the City Council may accept one policy from Attachment 1A and the other from Attachment 1B. Attachment 9 provides a side-by-side summary of the differences between the two policy issues and Attachment 10 provides a side-by-side comparison of the regulations.

Processing Incentives

The regulations in Attachments 1A and 1B both require discretionary permits for projects that would be subject to the discretionary and CEQA process when the requirement is not triggered only as a result of an incentive requested in accordance with State Density Bonus Law. Applicants will be required to state when a project proposes to use the Affordable Housing Density Bonus Regulations. The application will require that the applicant demonstrate that the incentive is necessary to make the housing units affordable, identify the proposed affordability levels and the percentage of affordable units, and any incentive(s) requested. Additional submittal requirements, such as financial data, may be required on a project by project basis.

Mayor's Recommendation for Processing - Attachment 1A [Sections 143.0740(d)(3-5)]

The Mayor's recommendation is that projects that provide affordable housing not be required to get a discretionary permit unless a discretionary permit would be required without the affordable housing component of the project. When an application for a project using the Affordable Housing Density Bonus Regulations is submitted it will be reviewed to determine if the project, minus the incentive(s), would require a discretionary permit. **When a discretionary permit is required, that same permit, at the same decision level, will be required and the appropriate CEQA review will occur.** The decision maker(s) will be required to make the findings of the discretionary permit in order to approve the project. The decision maker(s) will also be required to review any requested incentive(s) to determine if either of the findings to deny the incentive(s) can be made. A project cannot be approved if the decision maker(s) cannot make the findings to approve the permit, or if the decision maker(s) can make one of the findings to deny the incentive(s). There are a number of discretionary actions that will always be required due to the location of a project. Examples of discretionary actions that will always be required include Coastal Development Permits, Site Development Permits when environmentally sensitive lands or when a historic structure is present, street or right-of-way vacations, and projects located within a community plan

implementation overlay zone (CPIOZ) Type 'B'. Attachment 8 provides a complete list of discretionary permits that will always be required for projects using the Affordable Housing Density Bonus Regulations.

A project will be reviewed ministerially when, after review it is determined that the project minus the incentive(s), does not require a discretionary permit. The project will be concurrently reviewed by the San Diego Housing Commission, the City Planning and Community Investment Department, and the Development Services Department's Planning and Building Divisions. The project will be reviewed against applicable building codes (DSD Building), requirements for affordable housing agreements (SDHC), and the findings to deny a requested incentive(s) (CPCI and DSD Planning). A project can only receive a building permit when all reviewing disciplines are satisfied that the project meets all requirements. A project cannot be approved ministerially if the required findings for denial can be made.

Very few projects are anticipated to qualify for ministerial processing. First, in order to use the Affordable Housing Density Bonus Regulations, a project must propose and be able to achieve the maximum allowable density per the base zone or community plan. Existing zoning regulations related to height, parking, and environment often preclude a project from achieving the maximum allowable density. For instance, along Clairemont Mesa Boulevard, west of I-805, there are a number of existing multi-family projects that are zoned RM-3-9. This zone allows for up to 73 dwelling units per acre with a height limit of 60 feet. However, this area is subject to the Clairemont Mesa Height Limit Overlay Zone (30-foot height limit). It is not possible for a project to develop at a maximum density of 73 dwelling units per acre when it is restricted to a 30 foot height limit. A project could not request density bonus at this location through a ministerial process since it could not achieve maximum density under existing regulations. In order to use the Affordable Housing Density Bonus Regulations at this location a Process 5 Site Development Permit to exceed the 30-foot height limit (to achieve maximum density), would have to be processed in conjunction with a request for an incentive(s). Second, to be processed ministerially, a project without the proposed density bonus/incentive, must comply with all of the underlying zoning regulations, including height and setback. If any deviations would be required of the project without the density bonus/incentive then a Process 4 Planned Development Permit would have to be processed in conjunction with a request for an incentive. Third, as previously stated, there are numerous requirements to process discretionary permits for new development and multi-family housing based on locational criteria (Attachment 8) that apply to projects using the Affordable Housing Density Bonus Regulations.

Given this information, then first question might be "If the number of units anticipated to be processed ministerially is so low then why maintain a ministerial process?" However, a more relevant question is **"What message is the City sending about affordable housing if it requires an applicant who wants to build affordable housing to spend additional time and money in the discretionary process when the applicant could, based on existing zoning, build market rate housing through the ministerial process?"** Requiring a discretionary permit for projects that would not otherwise require

one will lengthen the review process an average of 6 months and increase project cost by an average of \$5,000 to \$10,000.

Alternative for Processing - Attachment 1B [Sections 143.0740(d)(3-4)]

The alternative would require that an affordable housing density bonus project always process a discretionary permit when an incentive is requested. A project would be processed at the same level of review that would normally apply if the request were not called an incentive. That is, if the requested deviation from development regulations (now called an incentive) were normally processed under a Process 2, 3, 4 or 5 level of review, then it would continue to be processed as such consistent with the City Municipal Code. No special processing would be associated with it except that the findings for approval or denial of the permit used by the decision maker in a process 2, 3, 4 or 5 would be replaced with the State Density Bonus Law findings for denial of an incentive. Maintaining the city's current processing allows for appeals, public notice, and community participation in projects that, except for a requested incentive, would be ministerial.

The criteria for approving an incentive under State Density Bonus Law are as follows:

- The applicant requests a density bonus.
- The applicant for a density bonus submits a request to the City for a specific incentive.
- The request meets the definition of what is considered an incentive under State Density Bonus Law.
- The applicant demonstrates that the waiver or modification of a development standard (the incentive) is necessary to make the housing units economically feasible.
- The incentive will result in identifiable, financially sufficient, and actual cost reductions.

The applicant is responsible for meeting all of the above criteria and where necessary burdened with proving that the criteria are satisfied. When the criteria are satisfied, the request can be approved. However, even if all of the criteria are provided to the satisfaction of the city, the City may, within its discretion, deny the incentive if either of the following written findings is made based upon substantial evidence:

1. The incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

2. The incentive would have a specific adverse impact¹, as defined in paragraph (2) of subdivision (d) of 65589.5, upon public health or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The burden to prove that the findings for denial can be made rests with the City. In other words, the applicant is not required, at this point, to demonstrate why there are no health & safety impacts, environmental impacts or historical resource impacts. It is the city's responsibility to demonstrate that such impacts will occur. The discretion remains with the City to determine whether the applicant for the incentive has sufficiently made the findings for approval, and secondly, that even if the criteria for approval have been made, that other circumstances (as outlined above) exist warranting denial of the project. *See* Government Code Sections 65915(d)(3) & (e). In considering denial, the City must weigh the facts and evidence to determine whether an incentive can be granted. As stated in State Density Bonus Law, "[n]othing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources."

Moderate Income For-Sale Housing

State Density Bonus Law establishes a sliding scale of density bonus for projects that provide for-sale housing for moderate income households. The state law baseline for the sliding scale provides a 5 percent density bonus for projects that include 10 percent of a project's pre-density bonus units for moderate-income households. Attachment 3 provides a side-by-side comparison of the Mayor's recommended bonus (City) and the alternative (State).

Mayor's Recommendation for Moderate Income - Attachment 1A (Table 143-07A)

As directed by the Land Use and Housing Committee, and recommended by the Mayor, the city-initiated amendment would provide a base density bonus of 20 percent for projects providing 10 percent of the pre-density bonus units for moderate-income households. The San Diego Housing Commission initially undertook an in-house analysis to determine whether the state density bonus of 5 percent in exchange for designating 10 percent of the units as moderate income units would be an incentive to

¹ "Specific adverse impact" on public health and safety means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety." Government Code Section 65589.5.

building moderate-income housing in San Diego. It was determined that the state density bonus for moderate income would not provide an incentive in San Diego given the high cost of land, increased construction costs, and the requirement to designate 10 percent of a project's units for moderate income households while receiving a density bonus of only 5 percent. More recently, the San Diego Housing Commission hired Keyser Marsten Associates, Inc. to conduct an analysis of the moderate-income density bonus to determine the density bonus needed to create an incentive for development of moderate income for-sale housing in San Diego. The report (Attachment 7) supports the Housing Commission's initial analysis.

The Keyser Marsten analysis, which is generally based on the RM-3-7 multi-dwelling unit zone, compared the incentives (profit/cost) derived from density bonuses of five percent, ten percent, fifteen percent, and twenty percent. The base line for the analysis was a multi-family development of 45 dwelling units with no density bonus. Other assumptions were that the density bonus units were two-bedroom units for a family of three earning 110 percent A.M.I. Table 3 provides a comparative breakdown of the analysis. The result of the analysis is that a density bonus of five percent or ten percent would provide no incentive, since such bonuses would result in financial losses. Density bonuses of fifteen percent and twenty percent would provide an incentive, since each would result in additional financial gain. However, the financial incentive provided by a density bonus of fifteen percent is marginal (\$3,700 per unit) and given likely future increases in construction costs would provide little to no incentive in the near future. A density bonus of twenty percent (\$10,400 per unit) is more likely to result in construction of moderate income affordable housing units in the City of San Diego.

TABLE 3
Economic Impact Analysis – Summary

| | Baseline | Percent Density Bonus | | | |
|----------------|----------|-----------------------|-------------|------------|------------|
| | | 5% | 10% | 15% | 20% |
| Dwelling Units | 45 | 47 | 49 | 51 | 54 |
| Total Profit | --- | (\$ 239,000) | (\$ 33,000) | \$ 187,000 | \$ 564,000 |
| Profit Per DU | --- | (\$ 5,100) | (\$ 700) | \$ 3,700 | \$ 10,400 |
| % of Cost | --- | - 1.4% | - 0.4% | 0.5% | 2.1% |
| % of Value | --- | - 1.1% | - 0.4% | 0.4% | 1.7% |

Alternative for Moderate Income - Attachment 1B (Table 143-07A)

The base of the density bonus scale for moderate income housing is a 5% density bonus for providing 10% of the units affordable at 110% AMI. This is the requirement in State Density Bonus Law.

Implementation:

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the city outside the Coastal Overlay Zone 30 days after the second reading by the City Council. As required for all amendments to the City's Local Coastal Program, implementation in areas within the Coastal Overlay Zone will become effective only upon the unconditional certification of the regulations by the California Coastal Commission.

Environmental Analysis:

The City of San Diego previously prepared Environmental Impact Report No. 96-0333 for the Land Development Code. It has been determined that the proposed amendments to the Affordable Housing Density Bonus Regulations may result in significant impacts not discussed in EIR No. 96-0333. It has been determined that the proposed amendments have the potential to result in significant impacts to visual quality, transportation, and parking; and cumulative impacts to visual quality and parking.

The extent to which these potential impacts may or may not occur depends on several factors, including, but not limited to, site specific project location, surrounding natural and built characteristics, and project design. As previously stated, the findings for denying an incentive provide further reductions in the potential for impacts. An incentive(s) can be denied when it is found to have an adverse impact on the physical environment, health and safety, or historic resources. Additionally, projects using the Affordable Housing Density Bonus Regulations and processing a discretionary permit will be subject to the findings for approving a development permit and CEQA review. CEQA review will identify whether a project has an environmental impact, and if there is an impact, necessary mitigation would be considered with the project by the decisionmaker(s) as part of the project.

FISCAL CONSIDERATIONS:

The costs of processing this amendment to the City's Affordable Housing Density Bonus Regulations are shared by the City Planning and Community Investment Department, which is funded through the general fund, and the Development Services Department Code Update Section which is funded through an overhead expense in the Development Services Department's budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

San Diego Housing Commission - On April 8, 2005 the Housing Commission voted 4-0-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low and very low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

- Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns;
- Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of LU&H for possible review and comment prior to adoption by the state or federal legislatures.
- Chart and track projects that take advantage of the density bonus program by monitoring the number of incentive(s) a project uses, the project location, and to what extent the project relies on state versus local elements of the program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Code Monitoring Team (CMT) - On April 12, 2006, the CMT voted 6-0-1 to support staff recommendation.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0-0 to support the draft ordinance with four recommendations. The first was that any proposal to increase density bonus for projects that satisfy their inclusionary housing onsite be expanded to also include the regulatory incentives afforded the state density bonus categories. After further review it was determined that a density bonus for projects that satisfy their onsite inclusionary housing and any expansion of that bonus to also include the incentives would dilute the incentive of providing additional affordable housing through the density bonus regulations. The second and third recommendations were that the review process for deviations for projects requesting a density bonus be reduced from the current city-wide Process Four to a Process Three, and that a separate category of density bonus should be developed for accessible units. Projects utilizing density bonus could be entitled to up to three incentives ministerially provided no discretionary permit is otherwise required. Reducing a decision level for deviating from city-wide zoning regulations as well as addressing the need for accessible living units should be considered city-wide and not in a piecemeal fashion for only certain project types. The fourth recommendation was that the minimum density bonus for moderate income housing be increased from 5 percent to 20 percent in recognition of the high development costs in San Diego. This has been included as a city-initiated amendment.

Community Planners Committee (CPC) - On February 22, 2005, the CPC voted 11-1-0 to oppose staff recommendation and recommended that the regulations be revised to not vary from or exceed the requirements of the State Density Bonus Law. Specifically, the CPC did not support the two city-initiated amendments. The CPC recommendation to oppose the city-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. The two city-initiated amendments would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing units would be developed more rapidly than they would through collection of in-lieu fees.

KEY STAKEHOLDERS:

Key stakeholders include the building industry, organizations that advocate for increasing the city's supply of affordable housing, and community planning groups.

ALTERNATIVES:

1. Adopt only the regulations that implement the state mandated Density Bonus Law and deny the city-initiated density bonus incentive. This would be adoption of an ordinance containing the regulations from:
 - The Mayor's Recommendation for Processing Incentives (Attachment 1A), or
 - The alternative for Processing Incentives (Attachment 1B), and
 - The alternative regulations for Moderate Income For-Sale Housing (Attachment 1B).
2. Adopt the regulations that implement the state mandated Density Bonus Law and accept or modify the city-initiated density bonus incentive. This would be adoption of an ordinance containing the regulations from:
 - The Mayor's Recommendation for Processing Incentives (Attachment 1A), or
 - The alternative for Processing Incentives (Attachment 1B), and
 - The regulations for Moderate Income For-Sale Housing from the Mayor's Recommendations for Moderate Income For-Sale Housing (Attachment 1A) or the alternative regulations for Moderate Income For-Sale Housing (Attachment 1B) with or without modification.
3. Deny or modify the regulations that implement the state mandated Density Bonus Law beyond what is presented in Attachments 1A and 1B, and deny or modify the city-initiated density bonus incentive. This action could cause the regulations to be out of compliance with state law.

Dan Joyce,
Senior Planner

William Anderson, FAICP
Deputy Chief of Land Use and
Economic Development

ANDERSON/DJ

- ATTACHMENTS:
- 1A. Mayor's Recommendation - Draft Regulations for Affordable Housing Density Bonus
 - 1B. Alternative Regulations
 2. Parking for Projects Utilizing Affordable Housing Density Bonus
 3. Comparison between State Requirement and City Proposal for Moderate Income Density Bonus
 4. Density Bonus Projects by Planning Areas and by Council Districts

5. Income and Density Bonus Project Distribution (2006)
6. Site Development Permit Findings for Environmentally Sensitive Lands
7. Keyser Marsten Associates, Inc. Report *Economic Impact Analysis Proposed Density Bonus Regulations*
8. Discretionary Permits Required of Density Bonus Projects
9. Summary Comparison - Mayor's Recommendations and Alternatives
10. Differences in Regulatory Language